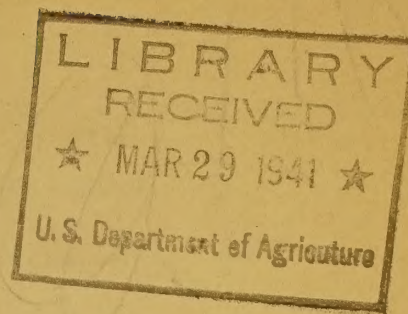


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U. S. Department of Agriculture  
Resettlement Administration  
Washington, D. C.



SOME LEGAL ASPECTS OF FARM REAL ESTATE  
TAXATION PROCEDURE AND ADMINISTRATION  
OF COUNTY LAND  
in  
South Dakota

by  
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July 1937





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## FOREWORD

On January 1, 1935, the various counties in South Dakota held tax sale certificates on about nine and one-half million acres of land. This did not include the tax sale certificates acquired in December 1934. Since that time considerable land has been sold for taxes in 1935 and 1936. Five million acres would be a very conservative estimate of the land on which the counties acquired certificates through these three sales. On January 1, 1935, about two million acres of land were subject to tax deed and it is estimated that about four million acres are subject to tax deed at the present time.

From these figures it is apparent that private ownership is breaking down in many areas. This situation makes it imperative that study be made of the laws under which this large amount of tax delinquent land is being handled.

It is hoped that this study will be followed by other studies which will suggest desirable changes in taxation procedure.

Harry A. Steele





## A C K N O W L E D G E M E N T

The author is greatly indebted to Harry A. Steele, Regional Supervisor, Area Policies and Programs Unit, for many suggestions and criticisms throughout the preparation of this paper. Sedley M. Lingo, in charge Public Finance Subunit, also contributed materially. T. S. Thorfinnson, Chief, and the entire personnel of the Land Use Planning Section, offered valuable suggestions as the study progressed. Much credit is also due the various members of the South Dakota state office, especially to Millard Solem.

Mr. Everett C. Norberg, Assistant Regional Attorney, Resettlement Administration, and John D. Wilson, of the Rapid City, South Dakota Bar, also provided valuable suggestions on various technical points involved.





## I N T R O D U C T O R Y

Proper land use and land use adjustments are closely associated with ownership and control of the land involved. Since taxes are a prior lien on land which can be satisfied only by taking action against the land, inability to pay taxes has a direct effect on the ownership and control of the land. Tax delinquency has long been a serious problem in many parts of South Dakota, but during the last few years it has become so increasingly prevalent that the counties are, or are in a position to become, owners of large areas. In view of this fact the following discussion and chart has been prepared to point out the various steps and the period involved from the time a particular tract of farm real estate is assessed (for example, 1937) until a tax deed may be taken upon default in payment of taxes based on that assessment. During the period of this procedure, the land is in somewhat of a transitional stage from private to public (or other individual) ownership and is susceptible to and often seriously abused. The original owner has in a sense abandoned his right to control the tract in the future and the temptation for exploitation through improper use of land is very great. At the same time the county, or other future owner, is powerless. In the event tax deed is ultimately taken by the county, the discussion contains a brief summary of what the county may do in order to obtain revenue from it. It is felt that a better understanding of the procedure and its relation to the control and use of land is essential to



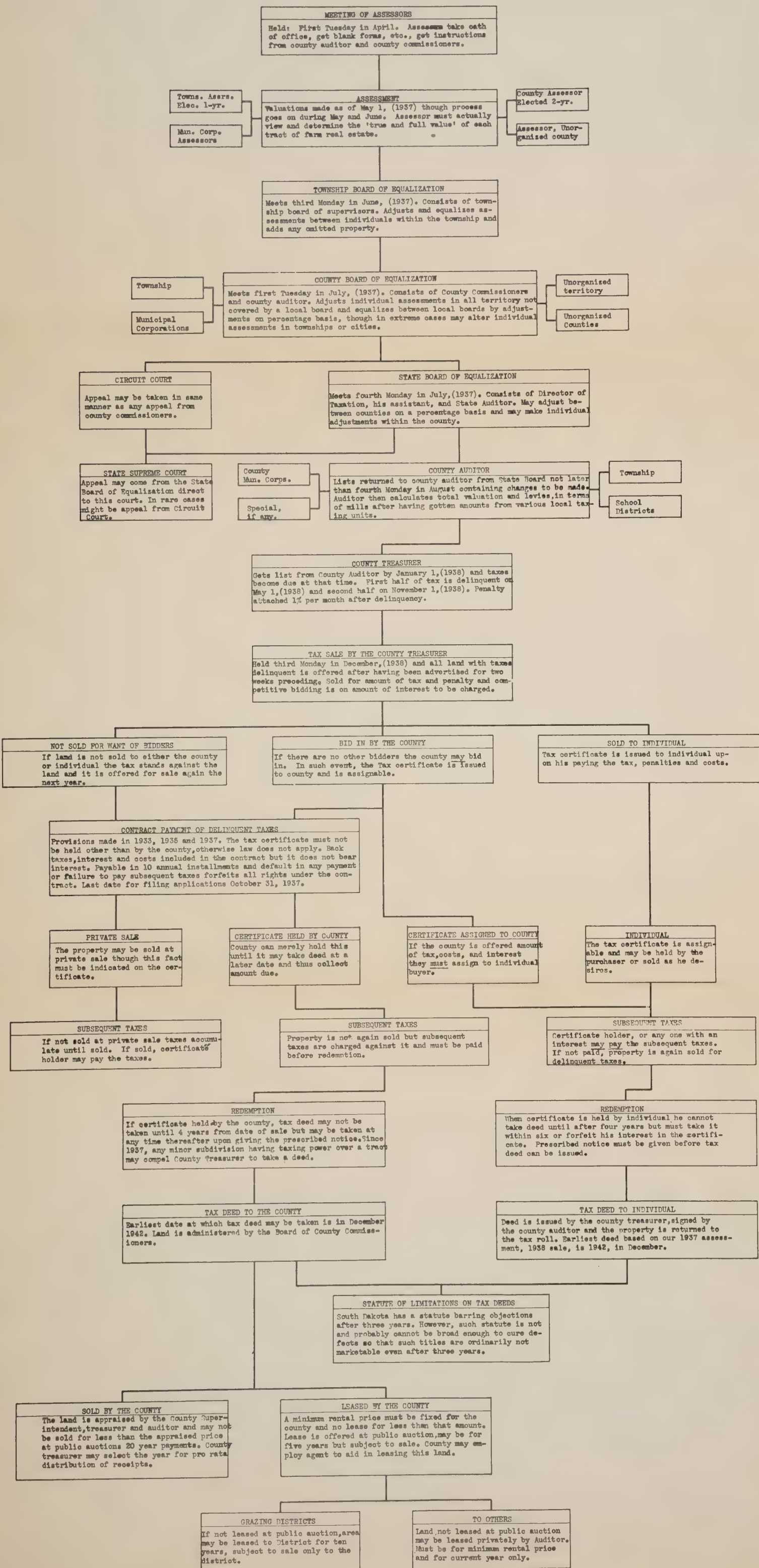


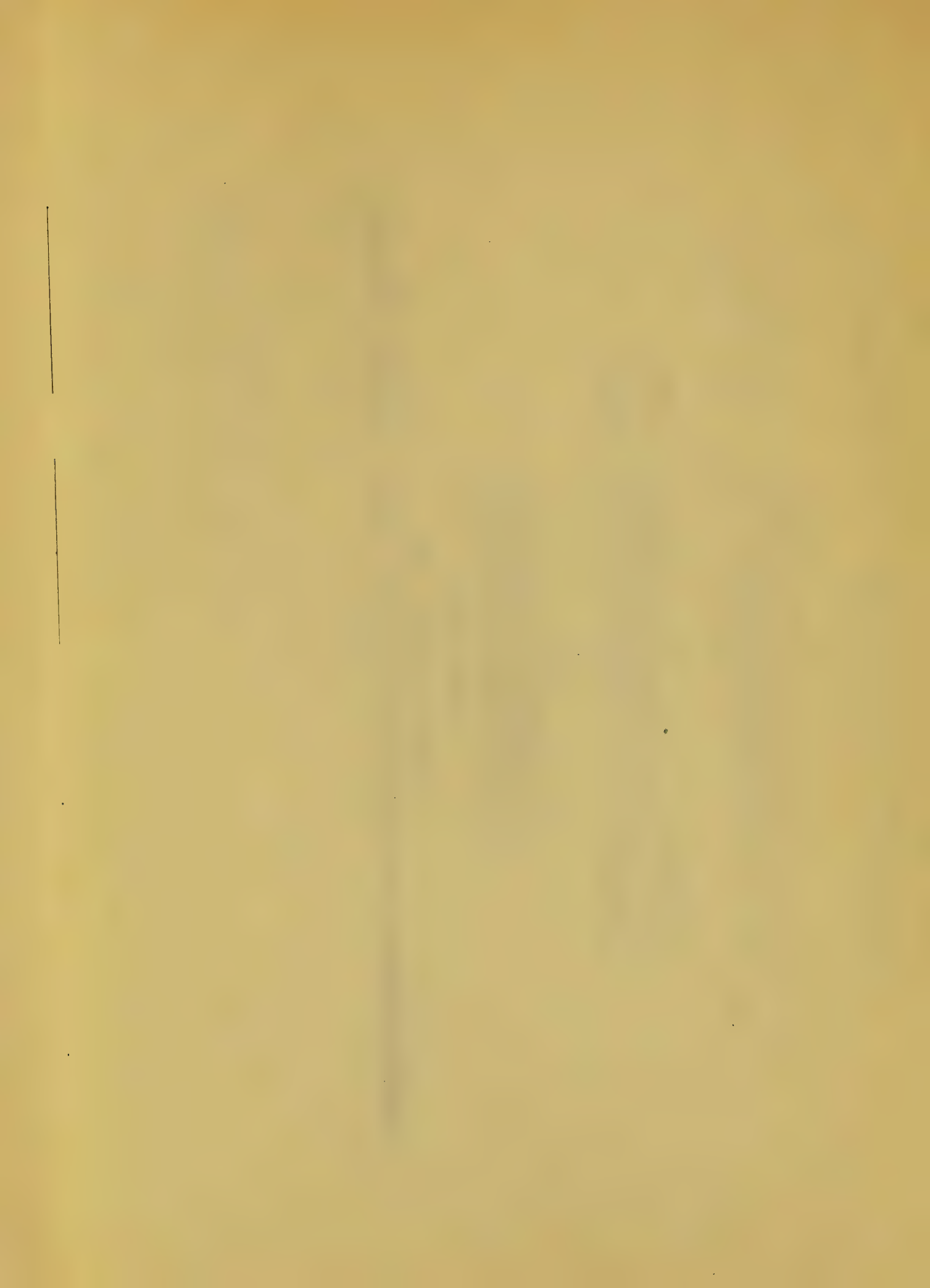






DIAGRAM SHOWING FARM TAXATION PROCEDURE AND ADMINISTRATION  
OF COUNTY LAND  
SOUTH DAKOTA







intelligent land use planning. Throughout the discussion an attempt has been made to relate the steps involved to the land problems found in different parts of South Dakota.

The difficulties encountered in attempting to succinctly describe such a complex procedure have been many and varied. Paramount among them has been the problem of maintaining sufficient breadth of treatment in order to take as many cases as possible and yet make it narrow enough to emphasize the main line of procedure. The primary purpose throughout has been to show the logical relationship of the various steps and it is realized that many answers to individual cases arising at any step will not be found in this discussion. However, it is hoped that the material here presented will bring about a better understanding of the problem as a whole and in that way throw light upon solution of individual problems.





## ASSESSMENT AND EQUALIZATION

### Assessors and Assessor Districts.

The first step in the procedure which directly and immediately effects our given tract of farm real estate, which we will follow in various steps, is that of assessment. However, before our tract can be assessed we must have an assessor and so will digress far enough to consider the election of the local assessor.

Each organized civil township in the state constitutes an assessor's district (C. L. 1929, Sec. 5976) and an assessor for such district is elected each year at the annual township meeting (first Tuesday in March) to serve a one year term. In counties fully organized into civil townships, assessors are paid by the townships at a rate determined by the township supervisors and no county assessor is elected. However, in counties in which any territory is not organized into civil townships, the county, township, and assessors in municipal corporation districts are paid by the county and the compensation is fixed by the county commissioners (C. L. 1929, Sec. 5982).

The territory within the county not included in a municipal corporation or an organized civil township constitutes the district of the county assessor who is elected at the general election to serve a two year term (C. L. 1929, Sec. 5975). The county assessor may appoint deputies though their number and salaries are determined by the county commissioners (C. L. 1929, Sec. 5984).





Each unorganized county having a population of not less than five hundred persons constitutes an independent taxing district (C. L. 1929, Sec. 5979-G). An assessor for such district is appointed by the county commissioners of the county to which it is attached. Such appointment must be made by January 1 of each odd year and the appointee serves a two-year term. Deputy assessors may be appointed and are entitled to the same rate of pay at the principal assessor which is determined by the county commissioners though it cannot exceed five dollars per day nor \$200, plus necessary expenses, per year. Payment is made from funds of the unorganized county (C. L. 1929, Secs. 5979-D). If an unorganized county does not contain 500 persons, the assessment is made by the county assessor of the organized county or his deputy, payment to be made from state treasury (C. L. 1929, Sec. 5984-A).

The only requirement for being eligible seems to be that in the case of a county or township assessor they must be an elector of the district which they are to serve. However, in the case of deputies no such requirement apparently exists (C. L. 1929, Sec. 5977).

It is therefore apparent that the particular manner of procuring our assessor will depend largely upon where the tract lies. In any event, however, there is not adequate precaution taken to insure the election or appointment of men fully qualified to perform what has become a highly complex task, and this situation presents a problem worthy of much consideration and adjustment.

The first part of the paper is devoted to a general discussion of the  
 various methods which have been proposed for the determination of the  
 rate of reaction. It is shown that the most reliable method is the  
 one which involves the measurement of the change in concentration of  
 one of the reactants or products. This method is applicable to all  
 reactions, and it is the only one which gives a direct measure of the  
 rate of reaction. The other methods, such as the measurement of the  
 change in volume or the change in color, are only applicable to certain  
 types of reactions. The paper then discusses the various factors which  
 affect the rate of reaction, such as the concentration of the reactants,  
 the temperature, and the presence of a catalyst. It is shown that the  
 rate of reaction increases with the concentration of the reactants, with  
 the temperature, and with the presence of a catalyst. The paper also  
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 discussion of the factors which affect the rate of reaction.

## Assessment Process

Returning now to our tract of land we find that our assessor is under legislative mandate to "actually view, when practicable, and determine the true and full value of each tract of real estate listed for taxation," and the value of improvements and the land must be listed separately. (Personal property is, of course, assessed at the same time, the assessor making up an alphabetical list of all such taxpayers, designating the school district and/or township in which the property is located, and making due return of the same.)

To aid him in this procedure the various county auditors procure blank forms which are available by the first Tuesday in April at which time the assessors meet with the county commissioners and auditor for instruction relative to their duties (C. L. 1929, Sec. 6701). The valuation is made as of May 1 each year (C. L. 1929, Sec. 6671) though the process goes on throughout May and June.

If our tract of land were located in an organized civil township the assessment would need to be completed and an assessment roll made up and delivered to the township board by the third Monday in June. Somewhat more time is allowed the county assessor in making his return to the county auditor though the assessment roll is in the same form and should contain a list of all taxable lands in numerical order, beginning in the lowest numbered section of the lowest numbered township, giving acreage in each tract, its value, the name of the owner, etc. (C. L. 1929, Sec. 6718). The county auditor is authorized to make additions to the return of





the county assessor though the owner of such property must be given notice and an opportunity to be heard (C. L. 1929, Sec. 6723-A).

Much of the criticism regarding the inequality of property taxes has been directed at the selection of assessors and the performance of their duties and no doubt much of this is justifiable. While such inquiry is outside the scope of this discussion, since we are concerned with the procedure through which our tract goes, it is nevertheless worthy of note that there is a law on the statute books of South Dakota (Laws of 1931, Ch. 255) which provides a procedure for obtaining a scientific classification of all land for assessment purpose. Action under this law may be instigated by a petition signed by twenty per cent of the resident freeholder electors of any county, whereupon the Director of Taxation employs some competent person to make the classification. After it is completed it is available to assessors, boards of equalization, and others. This would not, of course, cure the defects incident to the manner of selection but it would make available definite and reliable information for the use of officials concerned. Unfortunately, as yet no county in South Dakota has taken advantage of the provisions of this law though several counties in North Dakota have made such classifications under a law designed to accomplish a similar purpose. The harmful results from a land use point of view, as well as others, which flow from unquitable assessment are quite apparent.





## Township Board of Equalization

Returning to our tract of real estate we will assume that it is located within an organized civil township. In such event, the assessor delivers the assessment roll to the township clerk who presents it to the township board of equalization which meets the third Monday in June. This board consists of the township supervisors, or a majority of them and examines the roll to see that all property has been placed thereon and properly valued. The value of the property of any resident can not be raised until the person, or agent, has been notified of the intention of the board to do so and he be given an opportunity to be heard. Any person, feeling aggrieved, may apply to the Board for correction (there is no statutory requirement as to any particular form for such application nor that it be in writing), and the Board makes such changes as they deem just. (C. L. 1929, Sec. 6724), Laws 1937, Ch. 240). The township clerk acts as clerk of the equalization board and keeps a record of all changes made and upon completion certifies the corrected rolls to the county auditor which must be by the fourth Tuesday in June (C. L. 1929, Sec. 6726, Laws 1937, Ch. 240).

During the same period that the township board of equalization has been in session, the equalization boards of the various classes of municipal corporations have been meeting to equalize the assessments of city property.



## County Board of Equalization

At the same time the county auditor receives the assessment roll from the township containing our tract, he will receive that of other townships, any municipal corporations with equalization boards, and the roll from the county assessor; that is, he will have a complete assessment of all real estate (as well as personal property) in the county which he presents to the county board of equalization which meets on the first Tuesday in July and continues for not to exceed fifteen days. This board consists of the county commissioners, or the majority of them, and the county auditor who keeps a record which is published as other proceedings of the commissioners and a copy is transmitted with the composite assessment roll to the Director of Taxation, (C. L. 1929, Sec. 6728).

Our tract having been situated in an area having a local equalization board (the township), the jurisdiction of the county board in adjusting assessments is limited by statute to "correct mistake or gross inequalities". Gross inequality is defined to mean "Where adjoining property of the same class is assessed at a much higher or lower amount, according to value, than other adjoining property in the same assessment district". Under such a loose definition, the jurisdiction exercised by the county boards of equalization would be subject to a wide range of local variation (C. L. 1929, Sec. 6729).





As to farm real estate within territory not organized into civil townships; that is, the assessment district of the county assessor, the county board may raise or lower individual assessments to make proper adjustments (C. L. 1929, Sec. 6730). In addition, the county board adjusts valuations between the various districts having local boards by raising or lowering valuations on a percentage basis. Property in unorganized counties is equalized by the county board of equalization of the county to which it is attached in the same manner as property within the unorganized territory of the county. Before any individual assessment is raised the individual must be notified of the Board's intention to make such change, (C. L. 1929, Sec. 6731).

During the sessions of the board of equalization, any person, his attorney or agent, may apply for the correction of alleged errors and the board may make such adjustments, within above limits. Non-residents may make their first appeal to this board even though their property is assessed in a district having a local equalization board, (C. L. 1929, Sec. 6737). There is apparently no particular form in which such application must be filed nor is there any requirement that it be in writing or that notice be given of intention to make an appearance.

After all complaints have been heard and adjustments made, the county auditor prepares duplicate abstracts of the corrected lists, one copy to be filed in his office and one copy to be forwarded to state Director of Taxation on or before the fourth Monday in July.





If we have felt aggrieved with the assessment of our property and have presented the grievance to the county board without obtaining the relief asked for, there are at least three possible lines of action which we may follow: (1) We may drop the matter and accept the decision rather than go to the time, trouble, and expense incident to a further prosecution of our claim. These considerations deter many who would otherwise appeal. (2) We may appeal to the circuit court having jurisdiction over our county. Such appeal however involves the necessity of employing an attorney, usually posting of a bond, the expense of which makes it unprofitable for the average taxpayer to follow and we will omit it from further consideration. (3) We may appeal to the State Board of Equalization.

#### State Board of Equalization

A Secretary of Finance, of the Department of Finance, is appointed by the governor, with consent of senate for a term of four years. This Department of Finance is divided into four divisions: Audits and Accounts; Purchasing and Printing; Taxation; and Employment, (C. L. 1929, Sec. 5102-B). A Director of Taxation is appointed by the Secretary of Finance with the consent of governor and performs duties formerly exercised by the Tax Commissioner but under the general supervision of the Secretary of Finance. The Director appoints an Assistant Director of Taxation, with consent of Secretary of Finance and Governor, at salary fixed by the Secretary of Finance and Governor, (C. L. 1929, Sec. 5102-X 29).



The Director of Taxation, Assistant Director of Taxation, and the State Auditor constitute the state board of equalization and each of them has one vote, (Laws 1931, Ch. 97).

The duties and powers delegated to the Director of Taxation are broad in scope and include the general supervision over all assessment and tax laws of the state. He prescribes uniform blank forms; confers with, advises and directs assessors and boards of review by calling classes, etc.; requires state's attorneys to prosecute violations; orders reassessments of real or personal property of any class; and construes the tax laws of the state when requested to do so by an officer enforcing such laws, (C. L. 1929, Sec. 6587).

There are two ways in which this state board may alter the assessed valuation of our tract of land. (1) The Board may determine that the total valuation for our county is too high or too low in relation to other counties or in relation to the valuation placed by the Board on the various public utilities and raise or lower the county valuation by a certain per cent. In such event, we would not be notified by the Board of the change. (2) The Board may increase (or decrease) the valuation of our tract without affecting adjoining tracts if it finds that our tract has been under-assessed. In such event, however, it would be necessary that we be notified of the impending change and be given an opportunity to show why it should not be increased (Laws 1933, Ch. 186).





The Board meets on the first Monday of August each year to perform the duties relative to equalization and must complete its work and certify changes back to county auditors by the fourth Monday in August (Secs. 6590, 6736). In addition, the state board was authorized to make the levy for state purposes. This has not been done in recent years because of the State having adopted a policy of obtainings its revenue from other sources and leaving the property tax for local jurisdictions. The two mill levy on all property (except homesteads) for the Rural Credit Fund is somewhat of an exception to the above policy and was ordered by the legislature (Laws 1937, Ch. 254).



## COLLECTION OF TAXES

### Extensions by the County Auditors

Prior to the time that the State Board of Equalization certifies the rolls back to the county auditor, the various taxing jurisdictions within the county have determined the amounts which they will need to carry them through the next year and have certified the same to the county auditor. Thus the county commissioners levy the necessary taxes for the county on the first Tuesday in September (C. L. 1929, Sec. 6749) and at the same time, make the levy for attached, unorganized counties. The levy for civil townships is made on the last Tuesday in March by the board of supervisors and is certified by the township clerk to the county auditor (C. L. 1929, Sec. 6751). The amount to be raised for the various school districts is determined at the annual meetings and is certified to the county auditor by the twentieth of July each year (Laws 1931, Ch. 138, Sec. 147).

From these figures the county auditor calculates the rate in mills and tenths or hundredths of mills. However, if such rate is greater than the limit allowed by law it is the duty of the auditor to calculate only on the basis of the legal limit. These calculations may be extended upon the tax lists as "Total Consolidated Tax". Taxes levied for attached, unorganized counties are levied in the same manner (C. L. 1929, Secs. 6752, 6753).

As soon as practicable the county auditor makes out a tax list for each assessment district, containing an alphabetical list of all persons in whose names property other than real estate has





been listed with the valuation; a list of all taxable lands not including city property; and a list of town lots. The auditor also prepares a duplicate of this list which he must deliver to the county treasurer by the first of January following the levy. Immediately upon receipt of such list the county treasurer must specify, in a column made for that purpose, the years for which any of the real property has been sold for taxes and not redeemed (C. L. 1929, Sec. 6755).

The county auditor charges the treasurer with the total amount of the list and with any additional levies made, and credits him with taxes collected and other deductions allowed by law (C. L. 1929, Sec. 6756).

#### Collection by Voluntary Payment

All taxes on our tract are due on January 1st, following the year in which they were assessed and constitute a perpetual lien against the property from that date. The liability, however, extends only to the land; that is, the county treasurer may go against the land but there is no personal liability on the part of the owner.

On the first of May following the date when taxes become due, one-half becomes delinquent and every month thereafter there is added one per cent as interest and penalty, to be collected by the county treasurer. If the other half is not paid by the first day of November following, penalty and interest is attached at the same rate (C. L. 1929, Sec. 6761, as amended, Laws 1931, Ch. 254 and Laws 1933, Ch. 197).



The county treasurer collects all taxes whether levied by state, county, township, city, town, school, or unorganized county and credits the money to the proper fund. Warrants are receivable in payment of the taxes of the unit which issued such warrant when presented by the person to whom such warrant was originally issued (C. L. 1929, Secs. 6763, 6764).

The county treasurer makes out duplicate receipts, describing the land and the year for which payment is being made, for all taxes paid, one to be delivered to the taxpayer and the other to be delivered to the county auditor within one week.

The county treasurer in collecting taxes collects the oldest tax first and may not issue receipt for current year until all prior taxes are paid. The possession of a tax receipt issued by the county treasurer is conclusive evidence that all prior taxes chargeable against the land have been paid and is a bar to the collection of any prior taxes unless otherwise stated in the receipt.

#### Collection by the Sale of Tax Liens on Real Property

When taxes are not paid the only recourse open to the county treasurer is to sell tax liens on the real estate involved. The date of such sale is fixed by statute as the third Monday in December each year but prior to that time, notice must be given by publication in the county official newspaper once each week for two weeks next preceding the sale, or by posting if there be no such newspaper.





The treasurer offers the liens for sale in numerical order as the land appears on the tax lists. Bids are taken for the full amount of taxes, interest, and costs due and the bidder states the lowest rate of interest at which he will pay such taxes and costs and the sale is made to the bidder offering to charge the least amount of interest. In no event shall the interest rate exceed eight per cent and nothing less than the entire tract shall be sold (Laws 1933, Ch. 197, C. L. 1929, Sec. 6787). The purchaser receives an assignable tax certificate from the county treasurer which describes the land, specifies the sum paid, and the date on which the tax lien may be foreclosed and a tax deed taken.

In case there are no other bidders offering the amount due, the county treasurer is authorized to bid off any or all of the liens for the amount of taxes, interest and costs and the county thereby acquires all the rights of a private purchaser. The county treasurer makes out a certificate of purchase to the county in the same manner as if a sale had been made to any other person (Laws 1933, Ch. 197, C. L. 1929, Sec. 6795). The tax certificate is assignable and in the event that an individual offers the amount of the tax and accrued penalties the county treasurer is required to assign the certificate.

After the tax sale has been closed (last Monday December) if any tax liens remain unsold for want of bidders, the treasurer is authorized and required to sell the same at private sale to any person who will pay the taxes, penalty and costs. In such case, a tax certificate is made out and there is inserted a statement "That such real property has been offered at public sale for taxes

1. The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author points out that the United States has a long and complex history, and that it is important to understand the events and people that have shaped the nation. The author also discusses the role of the government in the development of the country, and the impact of the American Revolution on the nation's identity.

2. The second part of the paper discusses the role of the government in the development of the United States. It is argued that the government has played a central role in the nation's history, and that it is important to understand the role of the government in the development of the country. The author points out that the government has been responsible for the creation of the Constitution, the establishment of the federal government, and the development of the nation's infrastructure. The author also discusses the impact of the government on the lives of the people, and the role of the government in the protection of the rights of the citizens.

3. The third part of the paper discusses the impact of the American Revolution on the nation's identity. It is argued that the American Revolution was a turning point in the history of the United States, and that it was important for the nation to understand the impact of the Revolution on its identity. The author points out that the Revolution led to the creation of the Constitution, the establishment of the federal government, and the development of the nation's infrastructure. The author also discusses the impact of the Revolution on the lives of the people, and the role of the Revolution in the protection of the rights of the citizens.

but not sold for want of bidders" and that such property was "sold for taxes at private sale" (C. L. 1929, Sec. 6792).

#### Subsequent Taxes

If we return to consider our tract of land, we find that it has been sold and may be in any one of the following conditions:

(1) Sold to individual and certificate held by him. (2) Sold to county and certificate held by county or assigned to individual.

(3) Not sold for want of bidders nor sold at private sale. (4)

The owner has entered into a contract for payment of back taxes (to be discussed later).

In any event, taxes will continue coming due and must be paid or charged against the land. If the certificate is held by an individual he may pay any taxes levied whether levied previous or subsequent to such sale and have the same lien for such sums and may add them to the amounts paid by him at the time of purchase. The county treasurer must be informed of the nature of such payments and the receipt is marked "paid as subsequent taxes" (C. L. 1929, Sec. 6790). If such taxes are not paid, the property is again offered at tax sale and another tax certificate issued if sold.

If the county holds the certificate, the property is not again advertised or sold for delinquent taxes, but all subsequent levies are charged against the land and must be paid when assignment or redemption occurs (C. L. 1929, Sec. 6794). If the land had





not been sold for want of bidders; that is, a tax certificate was never issued the taxes accruing are merely added to the amount which must be bid in order to secure a tax certificate.

#### Redemption

The owner or any one having a legal or equitable interest in our tract of real estate may redeem at any time before a tax deed is taken. In such event it is necessary for the redeemer to pay the amount of charges on the original certificate and any additional sums which have accrued against the tract. If the county holds the outstanding certificates, the county treasurer gives the party a certificate of redemption and marks it "redeemed" on the tax list in his office (C. L. 1929, Sec. 6798). If an individual holds the outstanding certificate, payment is still made to the county treasurer who holds the money subject to the order of the holder of the certificate who is notified immediately by the county treasurer. The consequences which flow in event the tract is not redeemed are discussed in connection with the taking of tax deed.

#### Contract Payments of Back Taxes

Provisions for payment of back taxes and accrued penalties and interest over a period of ten years have been made by the 1933, 1935, and 1937 legislatures. Provisions of the two earlier statutes have no expired but except for the time element were substantially



as the present law. Applications must be submitted to county commissioners in triplicate and contain a description of the property; amount of taxes, including interest, penalties, and costs; a statement that there is no tax sale certificate held other than by the county; that the applicant has deposited sufficient money with the county treasurer to pay all taxes due in 1937; and an agreement to pay all delinquent taxes, penalties and accrued interest in ten equal installments (without interest) beginning one year from the date of the contract. Such a contract does not diminish the lien and default in payment of any installment for more than thirty days or failure to pay any subsequent taxes shall terminate the contract without notice being given, and it thereupon becomes the duty of the county treasurer to collect as if no contract had been made. Under the 1937 law, no applications may be made after October 31, 1937 nor granted after January 31, 1938. (Laws 1933, Ch. 194; Laws 1935, Ch. 194; Laws 1937, Ch. 241).





## TRANSFER OF TITLE

### Tax Deed by County or Individual

We will consider that our tract of land after having been sold has not been redeemed and that four years have elapsed so that the holder of the certificate, whether the county or an individual, is entitled to take a tax deed. The first step in procedure of acquiring a deed is the giving of notice. The statute outlining the requirements is long and detailed and must be followed explicitly (Laws 1937, Ch. 248, 6804). It is designed to insure notice being given to every individual having a redeemable interest; that is, this as well as other statutes reflect the attitude of allowing the original owner every opportunity of retaining ownership of the tract.

If the deed is to be taken by an individual the notice must be given and deed taken within six years from the date of the tax certificate. In the event of failure to act within that time the holder of the certificate forfeits all his rights acquired thereunder. In addition the person demanding a tax deed must purchase the assignment of all prior tax certificates held by the county on the property involved before the treasurer will issue the deed, (Laws 1937, Ch. 248). However, in the event a tax certificate is held by the county for more than four years, the assignee has one year from the date of the assignment within which to commence proceedings to procure a tax deed, (C. L. 1929, Sec. 6806). If the outstanding certificates are held by an individual rather than the



county, the statutes are silent as to the necessity of their all being bought in before a deed can be taken.

All property bid in by the county and not redeemed or assigned by the county within four years becomes the property of the county upon the County Treasurer giving the prescribed notice and issuing the tax deed. The provisions relating specifically to counties do not contain the requirement that the deed be taken within six years with the result that the county may hold a certificate much longer and still take deed on it, (C. L. 1929, Sec. 6803; Laws 1931, Ch. 64; Laws 1933, Ch. 198). If the county treasurer neglects to take deed after a period of redemption has elapsed, the county commissioners, any municipal corporation, school district, or township which are beneficiaries of the tax may make written application to the county treasurer to issue notice, etc., for taking tax deed and if he neglects to comply may be compelled to do so by court order (Ch. 206, Laws 1937).

#### Status of Tax Deeds

After having gone through the procedure outlined above and procured the issuance of a tax deed, many an individual has been greatly chagrined to learn that his title has little or no marketable value. Courts have traditionally and consistently interpreted tax foreclosure statutes strictly and the possibility of error is so great that seldom if ever can such a deed be considered marketable. The legislature has attempted to remedy this situation by a statute of limitations providing that after three years certain





objections to such title cannot be raised (C. L. 1929, Sec. 6825). However, this statute does not, and constitutionally probably could not, reach many of the weaknesses in such a title with the result that even after the expiration of the three years the title is not marketable.

The result of this situation is very serious from a land use point of view since the only alternative for the owner is a civil action to quiet claims against the title. Such a proceeding involves considerable expense which, especially in areas where the value of the land is only \$2.00 to \$5.00 per acre, along with expense already incurred, may be a substantial burden. While such titles are sometimes accepted, especially among local buyers, they materially hinder the exchange of lands.

This situation is prevalent in many states other than South Dakota and suggestions to reduce costs and improve the status of the deed are not wanting. Most prominent of these were consolidated into a Model Real Property Tax Collection Law drafted by a committee of the National Municipal League (24 Nat. Mun. Rev. 290). Roughly speaking the law provides for a combination of the two procedures now necessary in South Dakota whereby a foreclosure action is brought in the circuit court and a judgment entered declaring the certificate holder owner in fee.



## ADMINISTRATION OF COUNTY LAND

### Employment of Agents

The growing need for unified control and administration of county lands in order to obtain revenue to replace the large deficiencies resulting from tax delinquency and to avoid wholesale exploitation of such lands was reflected somewhat by the passage of Chapter 87 of the Laws of 1937. This bill provided that any county with an area of at least 250,000 acres of which five per cent or more of the taxable land has been acquired or is subject to acquisition through foreclosure of school loan mortgage or tax deed proceedings, the county commissioners may employ an agent to assist in the sale or lease of such lands or assist in the acquisition of title to such lands. The salary of such agent is fixed by the county commissioners and he may be furnished office space, clerical assistance, etc.

### Transfer by County of Property Acquired by Tax Deed

Whenever the county commissioners deem it advisable, or whenever any lesser governmental unit having taxing power over the property requests it, it is the duty of the county commissioners to offer tax deed land for sale. Before sale the land must be appraised by a Board of Appraisers consisting of the county superintendent of schools, county treasurer, and county auditor and no property may be sold for a sum less than appraisement. All sales are held between 10:00 a. m. and 4:00 p. m. at the county court house, or





at the treasurer's office in the event there is no court house.

All sales are under the direction of the county auditor.

Notice of the sale is given by publishing notice once each week for three successive weeks prior to the date of the sale and must contain a description of the real property to be sold and the time, place, and terms of sale. If the sale price is \$250 or less, payment must be in cash, if more than \$250 at least one-fifth must be in cash and the balance in not to exceed twenty annual installments with interest at five per cent. The money received from such sale, after deducting expenses, is distributed to the various jurisdictions on the basis of the tax for the year for which such property was sold at tax sale though the county treasurer may select another year, the taxes for which were included in the sale, if it will result in more equitable distribution (Laws 1937, Ch. 83).

#### Leasing County Lands.

All grazing land or other real property belonging to any county, whether acquired in satisfaction of a school fund mortgage or through tax deed proceedings, must be offered for lease at public auction at the county auditor's office at a date fixed by the Board of County Commissioners. Notice of such leasing must be published by the county auditor in the official county newspaper once in each of the two calendar weeks preceding the auction, stating the time and place of the leasing and the location of the lands. Each tract is leased to the highest bidder, though a former lessor who has the tract under his fence or enclosure has preference at



the highest bid. However, prior to the date of sale the County Board must have established a minimum rental rate and no land may be leased for less than that amount. If a satisfactory bid for cash is received the bidder must pay the county treasurer, take his receipt and present it to the county auditor who thereupon issues the lease. The length of lease is determined by the county commissioners, though it cannot exceed five years and if for longer than the current year it is subject to sale of the land. When any tract is offered and no satisfactory bid is received a subdivision thereof may be offered or it may be offered in connection with a contiguous tract for which no satisfactory bid has been received.

Any lands not leased at auction may be leased privately by the County Auditor, though such lease may be only for the current year and apparently must be for at least the amount of the minimum rental figure (Laws 1937, Ch. 86).

#### Leasing to Grazing Districts

The most recent provisions relating to leases to grazing districts provide that all lands owned by the county not already leased and located within the proposed district might be leased to the district for ten years, subject to sale only to the district (Laws 1937, Ch. 64). When considered in connection with the general leasing statute, passed in 1937 requiring all grazing land to be leased at public auction, it might be interpreted that the District could be given a ten-year lease only in event the land was not leased at the auction. However, it seems apparent that this was





not the intention of the legislature since in 1935 it had definitely shown an intention to put organized grazing districts in a favored position in regard to leasing county land. The general leasing statute passed in 1937 might well be interpreted as not affecting lands regarding which the legislature had passed specific enactments.



## SUMMARY AND CONCLUSIONS

The foregoing discussion, which is a summary in itself, gives a general picture of cumbersome tax procedure and its inadaptability to conservation of land resources. The procedure which was primarily designed to protect individual ownership has entirely broken down in many areas where land use problems are most acute.

Many factors have contributed to force former owners to abandon the responsibilities and rights of ownership. These factors and others as well as the legal entanglements into which such a procedure inevitably leads in clearing titles have deterred many if not all who would otherwise have invested in tax certificates. The result has been that the counties have found themselves with large amounts of lands "on their hands", their revenues greatly reduced accordingly and in some instances have been virtually forced into wholesale exploitation in order to fill the resulting gap between receipts and expenditures.

The few recent statutes relative to administration of county land evidence some realization of the problem and the attempt to cope with it. However, they are only piecemeal attempts to bolster up current revenues, are grossly inadequate even for that purpose, and contribute practically nothing toward establishing proper use of the land resources available.

The entire procedure needs to be overhauled with a point of view of adapting it to a policy of obtaining the maximum return from the land commensurate with sound land use.







DIAGRAM SHOWING FARM TAXATION PROCEDURE AND ADMINISTRATION  
OF COUNTY LAND  
SOUTH DAKOTA

